

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION**

CHRISTINA FRANCIS and COLE)
FRANCIS,)
Plaintiffs,)) Case No. 5:23-cv-06019
v.)
WAUSAU HOMES INCORPORATED,) JURY TRIAL DEMANDED
PHILLIPS BUILDERS, LLC, and)
SCOTT PHILLIPS,)
Serve: Scott Phillips)
216 W. Walnut St.)
Clarinda, IA 51632)
Defendants.)

WAUSAU HOMES' ANSWER TO FIRST AMENDED COMPLAINT

Defendant Wausau Homes Incorporated (“Wausau Homes” or “Defendant”), for its Answer to Plaintiffs’ First Amended Complaint, states as follows:

NATURE OF ACTION

1. Wausau Homes denies the allegations of Paragraph 1.
2. Wausau Homes denies the allegations of Paragraph 2.
3. Wausau Homes denies the allegations of Paragraph 3.
4. Wausau Homes denies that Plaintiffs are entitled to the relief sought in Paragraph 4.

PARTIES

5. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5.
6. Wausau Homes admits that it is a Wisconsin corporation that operates in at least nine states, including Missouri. Wausau Homes further admits that it supplies Wausau Homes

factory-built components to builders in its network. Wausau Homes denies the characterization that it “operates through a network that includes Wausau-approved local builders.” Wausau Homes further admits that it is a registered business in good standing with the State of Missouri and has a registered agent within Missouri.

7. Wausau Homes admits that Phillips Builders, LLC was at one time a builder in its network that contracted with the Plaintiffs for the construction of a home. Wausau Homes further admits that Phillips Builders utilized a Maryville, Missouri office but denies that Phillips Builders “operated” any Wausau Homes office. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the remaining allegations in Paragraph 7.

8. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8.

JURISDICTION AND VENUE

9. Without waiving its jurisdictional objections, Wausau Homes admits the allegations in Paragraph 9.

10. Without waiving its jurisdictional objections, Wausau Homes admits the allegations in Paragraph 10.

11. Without waiving its jurisdictional objections, Wausau Homes admits it sells products to authorized builders in at least nine states, including Missouri, which would subject Wausau Homes to personal jurisdiction in this District and Division. Wausau Homes denies that it, or its subsidiaries and affiliates, “continuously and systematically” solicit customers and provide services. To the extent any allegations remain, Wausau Homes denies the same.

FACTUAL ALLEGATIONS

12. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 12.

13. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 13.

14. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 14.

15. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 15.

16. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 16.

Wausau Homes Provided Clear and Indisputable Brand Promises to Plaintiffs

17. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 17.

18. Wausau Homes admits that the quoted statements were contained on certain versions of its website. Wausau Homes denies the characterization of such statements as “promises.” To the extent any allegations remain, Wausau Homes denies the same.

19. Wausau Homes admits that the quoted statements were contained on certain versions of its website. Wausau Homes denies the characterization of such statements as “promises.” To the extent any allegations remain, Wausau Homes denies the same.

20. Wausau Homes admits that the quoted statements were contained on certain versions of its website. Wausau Homes denies the characterization of such statements as “promises.” To the extent any allegations remain, Wausau Homes denies the same.

21. Wausau Homes admits that the quoted statements were contained on certain versions of its website. Wausau Homes denies the characterization of such statements as “promises.” To the extent any allegations remain, Wausau Homes denies the same.

22. Wausau Homes admits that the quoted statements were contained on certain versions of its website. Wausau Homes denies the characterization of such statements as “promises.” To the extent any allegations remain, Wausau Homes denies the same.

23. Wausau Homes admits that the quoted statements were contained on certain versions of its website. Wausau Homes denies the characterization of such statements as “promises.” To the extent any allegations remain, Wausau Homes denies the same.

24. Wausau Homes denies the allegations of Paragraph 24.

25. Wausau Homes admits that the quoted statements were contained on certain versions of its website. Wausau Homes denies the remaining allegations.

26. Wausau Homes denies the allegations of Paragraph 26. Wausau Homes admits that from time to time it advertised for and retained “set contractors” as independent contractors to erect the Wausau Homes components of a home, all under the supervision of the local builder.

27. Wausau Homes admits that the quoted statements were contained on certain versions of its website. Wausau Homes denies the remaining allegations.

28. Wausau Homes admits that Phillips Builders was a Wausau Homes local builder. Wausau Homes denies the remaining characterizations and allegations.

29. Wausau Homes admits that Phillips Builders operated out of an office in Maryville that it owned or leased, had an email address with a Wausau Homes domain name, and that a version of the Wausau Homes’ website contained information concerning Phillips Builders. Wausau Homes denies the allegation that Phillips Builders had “a custom web page” on the

Wausau Homes website and that the office was a Wausau Homes' office owned or leased by Wausau Homes. To the extent any allegations remain, Wausau Homes denies the same.

30. Wausau Homes admits that the quoted statements were contained on certain versions of its website. Wausau Homes denies the characterization that local builders such as Phillips Builders were "celebrated" as part of the Wausau Homes network.

31. Wausau Homes admits that the builders in its network operate throughout certain states of the Midwest but denies the remaining allegations.

32. Wausau Homes denies the allegations of Paragraph 32.

33. Wausau Homes denies the allegations of Paragraph 33.

34. Wausau Homes denies the allegations of Paragraph 34.

35. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 35.

36. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 36.

37. Wausau Homes denies the allegations of Paragraph 37.

38. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 38.

39. Wausau Homes denies the allegations of Paragraph 39.

40. Wausau Homes denies the allegations of Paragraph 40.

41. Wausau Homes denies the allegations of Paragraph 41.

42. Wausau Homes denies the allegations of Paragraph 42.

43. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 43.

44. Wausau Homes denies the allegations of Paragraph 44.

45. Wausau Homes admits that Phillips signed a Confession of Judgment. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 45.

46. Wausau Homes denies the allegations made against it in Paragraph 46. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 46.

47. Wausau Homes denies the allegations of Paragraph 47.

**Wausau Homes, Phillips, and Phillips Builders
Failed to Abide by Their Promises to Plaintiffs**

48. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 48.

49. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 49.

50. Wausau Homes admits that the Plaintiffs contracted with Defendant Phillips Builders for the construction of a home for the price of \$286,430.00. To the extent any allegations remain, Wausau Homes denies the same.

51. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 51.

52. Wausau Homes denies the characterization of such statements as "promises." Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 52.

53. Wausau Homes denies the allegations made against it in Paragraph 53. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 53.

54. Wausau Homes denies the allegations made against it in Paragraph 54. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 54.

55. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 55.

56. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 56.

57. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 57.

The Francis House

58. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 58.

59. Wausau Homes denies the allegations made against it in Paragraph 59. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 59.

60. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 60.

61. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 61.

62. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 62.

63. Wausau Homes denies the allegations of Paragraph 63.

64. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 64.

65. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 65.

66. Wausau Homes denies the allegations made against it in Paragraph 66. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 66.

67. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 67.

68. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 68.

69. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 69.

70. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 70.

71. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 71.

72. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 72.

73. Wausau Homes denies the allegations made against it in Paragraph 73. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 73.

74. Wausau Homes denies the allegations made against it in Paragraph 74. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 74.

75. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 75.

76. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 76.

77. Wausau Homes denies the allegations made against it in Paragraph 77. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 77.

78. Wausau Homes denies the allegations made against it in Paragraph 78. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 78.

79. Wausau Homes denies the allegations made against it in Paragraph 79. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 79.

80. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 80.

81. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 81.

82. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 82.

83. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 83.

84. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 84.

85. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 85.

86. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 86.

87. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 87.

88. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 88.

89. Wausau Homes denies the allegations made against it in Paragraph 89. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 89.

**Wausau Homes has Refused to Take Responsibility
for Its Actions and Inactions**

90. Wausau Homes admits that Jay Schutte had communications with Cole Francis, but denies the remaining allegations of Paragraph 90 due to the vagueness of the phrase “regarding the incidents contained herein.”

91. Wausau Homes denies the allegations of Paragraph 91.

92. Wausau Homes denies the allegations of Paragraph 92.

93. Wausau Homes denies the allegations of Paragraph 93.

94. Wausau Homes denies the allegations of Paragraph 94.

95. Wausau Homes denies the allegations of Paragraph 95.

96. Wausau Homes denies the allegations of Paragraph 96.

97. Wausau Homes denies the allegations of Paragraph 97.

98. Wausau Homes denies the allegations made against it in Paragraph 98. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 98.

99. Wausau Homes denies the allegations of Paragraph 99.

100. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 100.

101. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 101.

102. Wausau Homes denies the allegations of Paragraph 102.

103. Wausau Homes denies the allegations of Paragraph 103.

COUNT I
VIOLATION OF THE MISSOURI MERCHANDISING PRACTICES ACT
(“MMPA”) AGAINST ALL DEFENDANTS
(MO. REV. STAT. §§ 407.020, et seq.)

104. Wausau Homes repeats and realleges its answers to the prior allegations as if fully set forth herein.

105. Paragraph 105 contains only a statement of law and does not require a response.

106. Paragraph 106 contains only a statement of law and does not require a response.

107. Wausau Homes denies the allegations against it contained in Paragraph 107. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 107.

108. Wausau Homes denies the allegations of Paragraph 108.

109. Wausau Homes denies the allegations of Paragraph 109.

110. Wausau Homes admits that the Plaintiffs contracted with Defendant Phillips Builders for the construction of a home, and that Wausau Homes supplied Wausau Homes factory-built components for the home. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 110.

111. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 111.

112. Wausau Homes denies the allegations against it contained in Paragraph 112. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 112.

113. Wausau Homes denies the allegations against it contained in Paragraph 113. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 113.

114. Wausau Homes denies the allegations against it contained in Paragraph 114. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 114.

115. Wausau Homes denies the allegations against it contained in Paragraph 115. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 115.

116. Wausau Homes denies the allegations against it contained in Paragraph 116. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 116.

117. Wausau Homes denies the allegations against it contained in Paragraph 117. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 117.

118. Wausau Homes denies the allegations of Paragraph 118. Wausau Homes denies that Plaintiffs are entitled to the relief sought in their Prayer for Relief.

COUNT II
FRAUDULENT MISREPRESENTATION AGAINST WAUSAU

119. Wausau Homes repeats and realleges its answers to the prior allegations as if fully set forth herein.

120. Wausau Homes denies the allegations of Paragraph 120.

121. Wausau Homes denies the allegations of Paragraph 121.

122. Wausau Homes denies the allegations of Paragraph 122.

123. Wausau Homes denies the allegations of Paragraph 123.

124. Wausau Homes denies the allegations of Paragraph 124.

125. Wausau Homes denies the allegations of Paragraph 125.

126. Wausau Homes denies the allegations of Paragraph 126.

127. Wausau Homes denies the allegations against it contained in Paragraph 127. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 127.

128. Wausau Homes denies the allegations against it contained in Paragraph 128. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 128.

129. Wausau Homes denies the allegations against it contained in Paragraph 129. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 129.

130. Wausau Homes denies the allegations against it contained in Paragraph 130. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 130.

Wausau Homes denies that Plaintiffs are entitled to the relief sought in their Prayer for Relief.

COUNT III
NEGLIGENT MISREPRESENTATION AGAINST WAUSAU

131. Wausau Homes repeats and realleges its answers to the prior allegations as if fully set forth herein.

132. Wausau Homes denies the allegations of Paragraph 132.

133. Wausau Homes denies the allegations of Paragraph 133.

134. Wausau Homes denies the allegations of Paragraph 134.

135. Wausau Homes denies the allegations of Paragraph 135.

136. Wausau Homes denies the allegations of Paragraph 136.

137. Wausau Homes denies the allegations of Paragraph 137.

138. Wausau Homes denies the allegations of Paragraph 138.

139. Wausau Homes denies the allegations of Paragraph 139.

140. Wausau Homes denies the allegations of Paragraph 140.

141. Wausau Homes denies the allegations of Paragraph 141.

142. Wausau Homes denies the allegations of Paragraph 142.

Wausau Homes denies that Plaintiffs and the purported class are entitled to the relief sought in their Prayer for Relief.

COUNT IV
NEGLIGENT SUPERVISION AGAINST WAUSAU

143. Wausau Homes repeats and realleges its answers to the prior allegations as if fully set forth herein.

144. Wausau Homes denies the allegations of Paragraph 144.

145. Wausau Homes denies the allegations of Paragraph 145.

146. Wausau Homes denies the allegations of Paragraph 146.

147. Wausau Homes denies the allegations of Paragraph 147.

148. Wausau Homes denies the allegations of Paragraph 148.

149. Wausau Homes denies the allegations of Paragraph 149.

150. Wausau Homes denies the allegations of Paragraph 150.

151. Wausau Homes denies the allegations against it contained in Paragraph 151.

Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 151.

152. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 152.

153. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 153.

154. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 154.

155. Wausau Homes admits that Phillips signed a Confession of Judgment. Wausau Homes denies information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 155.

156. Wausau Homes denies the allegations of Paragraph 156.

157. Wausau Homes denies the allegations of Paragraph 157.

158. Wausau Homes denies the allegations of Paragraph 158.

159. Wausau Homes denies the allegations against it contained in Paragraph 159.

Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 159.

Wausau Homes denies that Plaintiffs are entitled to the relief sought in their Prayer for Relief.

COUNT V
NEGLIGENCE (AS PRINCIPAL) AGAINST WAUSAU

160. Wausau Homes repeats and realleges its answers to the prior allegations as if fully set forth herein.

161. Wausau Homes denies the allegations of Paragraph 161.

162. Wausau Homes denies the allegations against it contained in Paragraph 162.

Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 162.

163. Wausau Homes denies the allegations of Paragraph 163.

164. Wausau Homes denies the allegations of Paragraph 164.

165. Wausau Homes admits that Phillips signed a Confession of Judgment. To the extent any allegations remain, Wausau Homes denies the same.

166. Wausau Homes denies the allegations of Paragraph 166.

167. Wausau Homes denies the allegations of Paragraph 167.

168. Wausau Homes denies the allegations of Paragraph 168.

169. Wausau Homes denies the allegations of Paragraph 169.

170. Wausau Homes denies the allegations of Paragraph 170.

171. Wausau Homes denies the allegations of Paragraph 171.

172. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 172.

173. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 173.

174. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 174.

175. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 175.

176. Wausau Homes denies the allegations against it contained in Paragraph 176. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 176.

177. Wausau Homes denies the allegations of Paragraph 177.

Wausau Homes denies that Plaintiffs are entitled to the relief sought in their Prayer for Relief.

COUNT VI
BREACH OF IMPLIED WARRANTY
AGAINST ALL DEFENDANTS

178. Wausau Homes repeats and realleges its answers to the prior allegations as if fully set forth herein.

179. Wausau Homes admits the allegations of Paragraph 179.

180. Wausau Homes denies the allegations of Paragraph 180.

181. Wausau Homes denies the allegations of Paragraph 181.

182. Wausau Homes denies the allegations against it contained in Paragraph 182.

Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 182.

183. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 183.

184. Wausau Homes denies the allegations against it contained in Paragraph 184.

Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 184.

185. Wausau Homes denies the allegations of Paragraph 185.

186. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 186.

187. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 187.

188. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 188.

189. Wausau Homes denies the allegations against it contained in Paragraph 189.

Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 189.

190. Wausau Homes denies the allegations of Paragraph 190.

Wausau Homes denies that Plaintiffs and the purported class are entitled to the relief sought in their Prayer for Relief.

COUNT VII
BREACH OF CONTRACT
AGAINST PHILLIPS AND PHILLIPS BUILDERS

191. Wausau Homes repeats and realleges its answers to the prior allegations as if fully set forth herein.

192. Count VII is not asserted against Wausau Homes. Accordingly, the allegations set forth under Count VII, including all of the allegations in Paragraphs 191 – 201 inclusive do not require a response. To the extent a response is required, Wausau Homes denies the allegations.

Count VII is not alleged against Wausau Homes. Accordingly, the Prayer for Relief under Count VII does not require a response. To the extent a response is required, Wausau Homes denies that Plaintiffs are entitled to the relief sought.

COUNT VIII
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
AGAINST PHILLIPS AND PHILLIPS BUILDERS

202. Wausau Homes repeats and realleges its answers to the prior allegations as if fully set forth herein.

203. Count VIII is not asserted against Wausau Homes. Accordingly, the allegations set forth under Count VIII, including all of the allegations in Paragraphs 203 – 209 inclusive do not require a response. To the extent a response is required, Wausau Homes denies the allegations.

Count VIII is not alleged against Wausau Homes. Accordingly, the Prayer for Relief under Count VIII does not require a response. To the extent a response is required, Wausau Homes denies that Plaintiffs are entitled to the relief sought.

COUNT IX
FRAUD AGAINST PHILLIPS AND PHILLIPS BUILDERS

210. Wausau Homes repeats and realleges its answers to the prior allegations as if fully set forth herein.

211. Count IX is not asserted against Wausau Homes. Accordingly, the allegations set forth under Count IX, including all of the allegations in Paragraphs 211 – 220 inclusive do not require a response. To the extent a response is required, Wausau Homes denies the allegations.

Count IX is not alleged against Wausau Homes. Accordingly, the Prayer for Relief under Count IX does not require a response. To the extent a response is required, Wausau Homes denies that Plaintiffs are entitled to the relief sought.

COUNT X
NEGLIGENCE AGAINST PHILLIPS AND PHILLIPS BUILDERS

221. Wausau Homes repeats and realleges its answers to the prior allegations as if fully set forth herein.

222. Count X is not asserted against Wausau Homes. Accordingly, the allegations set forth under Count X, including all of the allegations in Paragraphs 222 – 228 inclusive do not require a response. To the extent a response is required, Wausau Homes denies the allegations.

Count X is not alleged against Wausau Homes. Accordingly, the Prayer for Relief under Count X does not require a response. To the extent a response is required, Wausau Homes denies that Plaintiffs are entitled to the relief sought.

COUNT XI
BREACH OF EXPRESS WARRANTY
AGAINST PHILLIPS AND PHILLIPS BUILDERS

229. Wausau Homes repeats and realleges its answers to the prior allegations as if fully set forth herein.

230. Count XI is not asserted against Wausau Homes. Accordingly, the allegations set forth under Count XI, including all of the allegations in Paragraphs 230 – 237 inclusive do not require a response. To the extent a response is required, Wausau Homes denies the allegations.

Count XI is not alleged against Wausau Homes. Accordingly, the Prayer for Relief under Count XI does not require a response. To the extent a response is required, Wausau Homes denies that Plaintiffs are entitled to the relief sought.

COUNT XII
TEMPORARY NUISANCE
AGAINST ALL DEFENDANTS

238. Wausau Homes repeats and realleges its answers to the prior allegations as if fully set forth herein.

239. Wausau Homes denies the allegations of Paragraph 239.

240. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 240.

241. Wausau Homes denies the allegations against it contained in Paragraph 241. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 241.

242. Wausau Homes denies the allegations against it contained in Paragraph 242. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 242.

243. Wausau Homes denies the allegations against it contained in Paragraph 243. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 243.

244. Wausau Homes denies the allegations contained in Paragraph 244.

245. Wausau Homes denies the allegations against it contained in Paragraph 245. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 245.

246. Wausau Homes denies the allegations against it contained in Paragraph 246. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 246.

247. Wausau Homes denies the allegations contained in Paragraph 247.

248. Wausau homes denies the allegations against it in Paragraph 248. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 248.

249. Wausau homes denies the allegations against it in Paragraph 249. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 249.

250. Wausau homes denies the allegations against it in Paragraph 250. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 250.

251. Wausau homes denies the allegations against it in Paragraph 251. Wausau Homes denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 251.

ALTER EGO

Wausau Homes repeats and realleges its answers to the prior allegations as if fully set forth herein.

252. Alter Ego is not asserted against Wausau Homes. Accordingly, the allegations set forth in Paragraphs 252 – 259 inclusive do not require a response. To the extent a response is required, Wausau Homes denies the allegations.

Wausau Homes denies that Plaintiffs are entitled to the relief sought in their Prayer for Relief.

DEFENSES AND AFFIRMATIVE DEFENSES

Without assuming any burden of proof, persuasion, or production not otherwise legally assigned to Wausau Homes as to any element of Plaintiffs' claims, Wausau Homes asserts the following defenses and affirmative defenses applicable to Plaintiffs.

1. This Court lacks subject matter jurisdiction over this action.
2. Plaintiffs are bound by agreements to arbitrate the disputes pleaded, and the addition of new facts and claims in the First Amended Complaint affords Wausau Homes the right to arbitrate.
3. Plaintiffs fail to state a cause of action against Wausau Homes.
4. Plaintiffs have failed to take reasonable steps to reduce, minimize, or otherwise mitigate any damages they allegedly suffered.
5. Plaintiffs' claims are barred, reduced, and/or limited pursuant to applicable statutory and common law regarding limitations of awards, caps on recovery, and setoffs.
6. Any alleged injuries or damages Plaintiffs sustained were caused wholly or in part by acts, omissions, and/or conduct of itself or other entities, or by other intervening or superseding events, factors, occurrences, or conditions, which were the sole proximate cause or an intervening or superseding cause of any injury or damage.

7. Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver, estoppel (including, without limitation, equitable estoppel and/or judicial estoppel), *in pari delicto*, unclean hands, laches, and/or consent.

8. Wausau Homes did not use or employ deception, fraud, false pretense, false promise, misrepresentation, or unfair practice, or conceal or omit any material fact in connection with the sale or advertisement of its products or services.

9. Wausau Homes made no misrepresentations in the course of its business.

10. Wausau Homes exercised reasonable care in providing any alleged representations.

11. Plaintiffs did not justifiably rely on any alleged information provided by Wausau Homes.

12. Plaintiffs did not suffer an ascertainable loss of money or property as the result of any negligence, act, omission, or representation of Wausau Homes.

13. Wausau Homes did not have a duty to supervise Phillips Builders.

14. Wausau Homes had no reason to know that Phillips Builders would fail to abide by their contracts with Wausau Homes and with Plaintiffs.

15. Wausau Homes made no guarantees or promises to Plaintiffs.

16. Wausau Homes owed no contractual duties to Plaintiffs.

17. Wausau Homes did not sell goods or services to Plaintiffs.

18. Wausau Homes performed at all times in a good and workmanlike fashion, and the goods it supplied Phillips Builders were merchantable at the time of sale.

19. Phillips Builders is not an agent or employee of Wausau Homes.

20. Wausau Homes is not liable for the acts or omissions of Phillips Builders.

21. Wausau Homes did not unreasonably use its property.

22. Wausau Homes did not substantially impair Plaintiffs' alleged right to peacefully use their property.

23. Wausau Homes reserves the right to assert additional defenses and to amend and/or supplement those defenses asserted herein upon discovery of further information concerning the events and circumstances in the Complaint.

WHEREFORE, Defendant Wausau Homes Incorporated, respectfully requests that this Court enter judgment and provide relief as follows:

- A. That Plaintiffs' causes of action stated in the Complaint be dismissed with prejudice;
- B. That Wausau Homes be awarded reasonable attorneys' fees, expenses, and costs, incurred in connection with this action, to the extent permitted by applicable law; and
- C. That Wausau Homes be awarded any and all further legal and equitable relief that the Court may deem just and proper under the circumstances.

Dated: June 27, 2024

Respectfully submitted,

**BRYAN CAVE LEIGHTON PAISNER
LLP**

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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2024, the foregoing was filed with the Court via the CM-ECF system, which sent electronic notice to the following:

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